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Fast Track Proposed Regulation Agency Background Document

Approving authority name	Waste Management Board
Virginia Administrative Code (VAC) citation	9 VAC 20-80
Regulation title	Solid Waste Management Regulations
Action title	Amendment 4a - Elimination of Radio Advertisement
Document preparation date	May 23, 2005

This information is required for executive review (www.townhall.state.va.us/dpbpages/apaintro.htm#execreview) and the Virginia Registrar of Regulations (legis.state.va.us/codecomm/register/regindex.htm), pursuant to the Virginia Administrative Process Act (www.townhall.state.va.us/dpbpages/dpb_apa.htm), Executive Orders 21 (2002) and 58 (1999) (www.governor.state.va.us/Press_Policy/Executive_Orders/EOHome.html), and the *Virginia Register Form, Style and Procedure Manual* (http://legis.state.va.us/codecomm/register/download/styl8_95.rtf).

Brief summary

*Please provide a brief summary of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation. Do **not** state each provision or amendment or restate the purpose and intent of the regulation.*

The variance petition processing procedures contained in 9 VAC 20-80-790 B 3 c require a radio advertisement of the director's tentative decision to grant or deny the variance petition. The radio broadcast is to be conducted in the locality where the applicant/activity is located. The purpose of this amendment is to remove the requirement to conduct a radio advertisement.

Legal basis

Please identify the state and/or federal source of legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including General Assembly bill and chapter numbers, if applicable, and (2) promulgating entity, i.e., the agency, board, or person. Describe the scope of the legal authority and the extent to which the authority is mandatory or discretionary.

40 CFR Part 258 provides the federal authority for the criteria for municipal solid waste landfills. The web site address for Part 258 is:

<http://www.epa.gov/epahome/rules.html#codified>

The presently proposed amendment deals with the portions of the regulations that are not affected by the federal requirements and that are not subject to the federal program approval. Therefore, the state regulations are no more restrictive than the federal regulations.

The Virginia Waste Management Act authorizes the Waste Management Board to supervise and control waste management activities in the Commonwealth and to promulgate regulations necessary to carry out its powers and duties. Article 2 of the Act prohibits the ownership or operation of an open dump, which is defined in §10.1-1400 to be any:

...site on which solid waste is placed, discharged, deposited, injected, dumped, or spilled so as to create a nuisance or present a threat of a release of harmful substances into environment or present a hazard to human health.

The Act further prohibits any person from operating a facility for the disposal, treatment, or storage of non-hazardous solid waste without a permit from the director of the Department of Environmental Quality (§10.1-1408.1 A). The Act requires the permit to contain such conditions or requirements that would prevent a substantial present or potential danger to human health and the environment (§10.1-1408.1 E). Virginia Code §10.1-1402(1), and (11) state:

The Board shall carry out the purposes and provisions of this chapter and compatible provisions of federal acts and is authorized to:

1. Supervise and control waste management activities in the Commonwealth...

... 11. Promulgate and enforce regulations, and provide for reasonable variances and exemptions necessary to carry out its powers and duties and the intent of this chapter and the federal acts, except that a description of provisions of any proposed regulation which are more restrictive than applicable federal requirements, together with the reason why the more restrictive provisions are needed, shall be provided to the standing committee of each house of the General Assembly to which matters relating to the content of the regulation are most properly referable.

The Virginia Waste Management Act is codified as chapter 14 sections 10.1-1400 through 10.1-1457 of the 1950 Code of Virginia, as amended. The web site address for the full text is:

<http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+TOC1001000001400000000000>

The Code contains no provisions requiring a radio advertisement for a variance petition.

Purpose

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Detail the specific reasons the regulation is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.

Currently the Department prepares the radio advertisement as required in 9 VAC 20-80-790 B 3 c. The Solid Waste Management Permit Application Fees and Annual Fees regulation (9 VAC 20-90-70C) requires the applicant for a variance to arrange for and bear the cost of the radio broadcast.

The radio broadcast is not required in the Code of Virginia. Other advertising methods are more effective than radio advertisement. Many radio stations will not run this type of advertising other than as a public service announcement. As such the stations will not guarantee that the radio advertisement will be run at a specific time and will not certify that the advertisement has been run. Many times, it is not clear which radio station would provide the most effective advertisement in a given area. This results in the radio broadcast placing an unnecessary burden on the regulated community and the department.

Print advertisement and announcements on the department's website are more effective methods to advertise variances to the regulations and are consistent with the advertising done for the processing of permits, licenses, or variances in other media. Under the solid waste regulations, the variance process is the only one that requires a radio advertisement.

During the past year DEQ has been working with the regulated community to develop more effective methods of public involvement. DEQ is working with citizen groups to provide information on a project sooner in the permitting process, work more directly with citizen groups, and facilitate the disbursement of information about upcoming projects to the general public. DEQ will continue to work to improve public involvement in DEQ decision making.

Rationale for using fast track process

Please explain the rationale for using the fast track process in promulgating this regulation. Please note: If an objection to the use of the fast-track process is received within the 60-day public comment period from 10 or more persons, any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, the agency shall (i) file notice of the objection with the Registrar of Regulations for publication in the Virginia Register, and (ii) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.

A radio broadcast is not an effective method of advertising a variance to the regulations. The radio advertisement is an unnecessary burden for both the applicant and the department. The fast track process will expedite the elimination of the requirement without being part of another extensive revision of the regulations.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. (Provide more detail about these changes in the "Detail of changes" section.)

The requirement for a radio broadcast will be removed from 9 VAC 20-80-790 B 3 c.

Issues

Please identify the issues associated with the proposed regulatory action, including:

- 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions;*
- 2) the primary advantages and disadvantages to the agency or the Commonwealth; and*
- 3) other pertinent matters of interest to the regulated community, government officials, and the public.*

If there are no disadvantages to the public or the Commonwealth, please indicate.

1) The radio advertisement is only used for variance applications. The department has no control when an advertisement will be run. A radio station will typically run an advertisement at a time when it will not interfere with their normal programming at a time when few citizens will be in a position to benefit from the announcement. The regulations will still require variances to be advertised using print advertising in the locality of the activity. DEQ is working with citizen groups to provide more effective public involvement for all media.

2) The advantage to the Commonwealth is to remove a burdensome requirement that is not specifically required in the Code of Virginia. Other types of advertising are more effective.

Requirements More Restrictive Than Federal

Please identify and describe any requirement of the proposal which are more restrictive than applicable federal requirements. Include a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements or no requirements that exceed applicable federal requirements, include a statement to that effect.

N/A

Locality Particularly Affected

Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities..

N/A

Public Participation

Please include a statement that in addition to any other comments on the proposal, the agency is seeking comments on the costs and benefits of the proposal and the impacts of the regulation on farm or forest land preservation.

In addition to any other comments, the Board is seeking comments on the costs and benefits of the proposal and on any impacts of the regulation on farm and forest land preservation.

Anyone wishing to submit written comments for the public comment file may do so at the public hearing or by mail, email or fax to Michael J. Dieter, P.O Box 10009, Richmond, VA 23240, ph: (804) 698-4146, fax: (804) 698-4327 and mjdieter@deq.virginia.gov. Written comments must include the name and address of the commenter. In order to be considered comments must be received by 5:00 p.m. on the date established as the close of the comment period.

A public hearing will be held and notice of the public hearing can be found in the Calendar of Events section of the Virginia Register of Regulations. Both oral and written comments may be submitted at that time.

Financial impact

Please identify the anticipated financial impact of the proposed regulation and at a minimum provide the following information:

Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source / fund detail, and (b) a delineation of one-time versus on-going expenditures	Staff time dedicated to prepare the radio advertisement and the letters to the facility per radio advertisement is approximately 2 hours.
Projected cost of the regulation on localities	Variances are not specific to localities. An individual locality applying for a variance would no longer be subject to paying for the radio advertisement if this regulation is adopted.
Description of the individuals, businesses or other entities likely to be affected by the regulation including specific information on the impact on small businesses as defined in § 2.2-2279	Individuals and businesses seeking variances to the Virginia Solid Waste Management Regulations would no longer be required to arrange for and pay for the radio advertisement if this regulation is adopted.
Agency's best estimate of the number of such entities that will be affected	There are approximately 25 variance applications processed by the department on a yearly basis that require the radio advertisement.
Projected cost of the regulation for affected individuals, businesses, or other entities	The cost of advertisements can vary between \$15 and \$250 depending on the radio station. These costs will be eliminated if the regulation is adopted.

Alternatives

Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action.

Currently, the radio broadcast places unnecessary burden on the regulated community and the department. Other methods advertising and facilitation of public involvement are more effective than the radio advertisement. During the past year DEQ has been working with the regulation community to develop more effective methods of public involvement. DEQ is working with citizen groups to provide information on a project sooner in the permitting process, work more directly with citizen groups, and facilitate the disbursement of information about upcoming projects. DEQ will continue to work to improve public involvement in DEQ decision making.

Impact on family

Please assess the impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

The regulations protect the public's health, safety and welfare and the environment from harmful results of the mismanagement of solid wastes. However, Amendment 4a of the Virginia Solid Waste Management Regulations has no direct impact on the institution of the family.

Detail of changes

Please detail all changes that are being proposed and the consequences of the proposed changes. Detail all new provisions and/or all changes to existing sections.

If the proposed regulation is intended to replace an emergency regulation, please list separately (1) all changes between the pre-emergency regulation and the proposed regulation, and (2) only changes made since the publication of the emergency regulation.

For changes to existing regulations, use this chart:

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
9 VAC 20-80-790 B 3 c	None	Requires radio advertisement for variance processing.	The radio advertisement requirement will be eliminated. Other methods of encouraging public involvement are more effective.

